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**AMENDMENT TO H.R. 4157, AS REPORTED BY
THE SUBCOMMITTEE ON HEALTH
OFFERED BY MR. MARKEY**

[Page and line numbers refer to SUBCOMEC002 of June 9,
2006]

Add at the end of title I [page 20, after line 16] the
following new section:

1 SEC. 106. PRIVACY AND SECURITY PROTECTIONS.

2 (a) IN GENERAL.—The Secretary of Health and
3 Human Services shall provide for standards for health in-
4 formation technology (as such term is used in this title)
5 that include the following privacy and security protections:

6 (1) Except as provided in succeeding para-
7 graphs, each entity must—

8 (A) expressly recognize the individual's
9 right to privacy and security with respect to the
10 electronic disclosure of such information;

11 (B) permit individuals to exercise their
12 right to privacy and security in the electronic
13 disclosure of such information to another entity
14 by obtaining the individual's written or elec-
15 tronic informed consent, which consent may au-
16 thorize multiple disclosures;

1 (C) permit an individual to prohibit access
2 to certain categories of individuals (as defined
3 by the Secretary) of particularly sensitive infor-
4 mation, including data relating to infection with
5 the human immunodeficiency virus (HIV), to
6 mental health, to sexually transmitted diseases,
7 to reproductive health, to domestic violence, to
8 substance abuse treatment, to genetic testing or
9 information, to diabetes, and other information
10 as defined by the Secretary after consent has
11 been provided under subparagraph (B).

12 (2) Informed consent may be inferred, in the
13 absence of a contrary indication by the individual—

14 (A) to the extent necessary to provide
15 treatment and obtain payment for health care
16 in emergency situations;

17 (B) to the extent necessary to provide
18 treatment and payment where the health care
19 provider is required by law to treat the indi-
20 vidual;

21 (C) if the health care provider is unable to
22 obtain consent due to substantial barriers to
23 communicating with the individual and the pro-
24 vider reasonably infers from the circumstances,
25 based upon the exercise of professional judg-

1 ment, that the individual does not object to the
2 disclosure or that the disclosure is in the best
3 interest of the individual; and

4 (D) to the extent that the information is
5 necessary to carry out or otherwise implement
6 a medical practitioner's order or prescription
7 for health services, medical devices or supplies,
8 or pharmaceuticals.

9 (3) The protections must prohibit the improper
10 use and disclosure of individually identifiable health
11 information by any entity.

12 (4) The protections must allow any individual
13 to enforce the individual's rights, and to have sanc-
14 tions and penalties imposed, against any entity that
15 has improperly obtained or disclosed individually
16 identifiable health information.

17 (5) The protections must require the use of rea-
18 sonable safeguards, including audit capabilities,
19 encryption, and other measures, against the risk of
20 loss or unauthorized access, destruction, use, modi-
21 fication, or disclosure of individually identifiable
22 health information.

23 (6) The protections must provide for notifica-
24 tion to any individual whose individually identifiable
25 health information has been lost, stolen, or used for

1 an unauthorized purpose by the entity responsible
2 for the information and notification by the entity to
3 the Secretary.

4 (b) LIST OF ENTITIES.—The Secretary shall main-
5 tain a public list identifying entities whose health informa-
6 tion has been lost, stolen, or used in an unauthorized pur-
7 pose as described in subsection (a)(6) and how many pa-
8 tients were affected by such action.

9 (c) CONSTRUCTION.—Nothing in this section shall be
10 construed as superseding, altering, or affecting (in whole
11 or in part) any statute, regulation, order, or interpretation
12 in effect in any State that affords any person privacy and
13 security protections greater than that the privacy and se-
14 curity protections described in subsection (a), as deter-
15 mined by the Secretary.